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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1942

No. 597

■

ADA McSPARRAN, *Petitioner*

*v.*

CITY OF PORTLAND, *Respondent*

■

**Petition for Writ of Certiorari to**
**The Supreme Court of the State of Oregon**

HAYDEN C. COVINGTON

*Attorney for Petitioner*

# INDEX

## Subject Index


| | PAGE |
|---|---|
| Summary Statement of Matters Involved | 1 |
| Statutory Provisions Sustaining Jurisdiction | 1 |
| Validity of the City Ordinance Drawn in Question | 1 |
| Date of Judgment and Order to be Reviewed | 2 |
| Timeliness | 3 |
| Time and Manner in which Questions Raised Below | 3 |
| Opinions of the Courts Below | 4 |
| Statement of Facts | 4 |
| Questions Presented | 8 |
| Reasons Relied on for Allowance of Writ | 9 |
| SUPPORTING BRIEF | 11-22 |
| Assignment of Errors | 11 |
| Argument | 11-22 |
| Conclusion | 22 |

PAGE

Allgeyer v. Louisiana
165 U. S. 578, 589 ..... 9, 20
American Ry. Exp. Co. v. Levee
263 U. S. 19, 20 ..... 3
Bacon v. Texas
103 U. S. 207, 215 ..... 3
Berea College v. Kentucky
211 U. S. 45, 67 ..... 9, 20
Bridges v. California
314 U. S. 252 ..... 20-21
Carlson v. California
310 U. S. 106 ..... 22
Farrington v. Tokushige
273 U. S. 284 ..... 9
Hague v. C. I. O.
307 U. S. 496, 501, 518 ..... 21
Herndon v. Lowry
301 U. S. 242 ..... 20
Hetrick v. Lindsey
265 U. S. 384 ..... 3
Jones v. Opelika
316 U. S. 584, 595-596 ..... 21
Lawton v. Steele
152 U. S. 133, 137 ..... 20
Lefebvre, In re
.. N. H. .., 20 A. 2d 185 ..... 17
Meyer v. Nebraska
262 U. S. 390 ..... 9, 20
Missouri ex rel. Gaines v. Canada
305 U. S. 337 ..... 9
Pierce v. Society of Sisters
268 U. S. 510 ..... 9, 20
Portland v. White
106 Or. 169, 211 P. 798 ..... 2

## Cases Cited

[*Concluded*]


| | PAGE |
|---|---|
| Schneider v. State | |
| 308 U. S. 147, 162-164 | 20, 21 |
| Skinner v. Oklahoma | |
| 316 U. S. 535 | 12 |
| State v. Richardson | |
| .. N. H. .., 27 A. 2d 94 | 9, 17 |
| Thornhill v. Alabama | |
| 310 U. S. 88 | 22 |
| Tumey v. Ohio | |
| 273 U. S. 510, 515 | 3 |
| United States v. Carolene Products Co. | |
| 304 U. S. 144, 152 | 20 |
| Virginia Ry. Co. v. Mullens | |
| 271 U. S. 220, 222 | 3 |
| Western Union Tel. Co. v. Hughes | |
| 203 U. S. 505 | 3 |


## Statutes Cited


New Hampshire Public Laws, chap. 118, sec. 21 ..... 17

Portland (Ore.) city ordinance No. 32927 ..... 1-2, 4

United States Code Annotated, Sec. 344 (b)
[Judicial Code, Sec. 237 (b)] ..... 1, 10, 22

United States Constitution
Amendment I ..... 8, 10, 11
Amendment XIV ..... 8, 10, 11

United States Supreme Court, Rules of
Rule 38, par. 5 (a) ..... 10, 22

PAGE

ALMIGHTY GOD, Word of [The Bible]

Deuteronomy 4:9, 10 ..... 13
Deuteronomy 6:5-8 ..... 13
Deuteronomy 11:18-21 ..... 13
Deuteronomy 12:28 ..... 13
Deuteronomy 32:46 ..... 13
1 Samuel 1:24 ..... 19
1 Samuel 2:11, 28 ..... 19
Psalm 8:2 ..... 19
Psalm 40:8 ..... 14
Psalm 119:105, 142, 144, 172 ..... 14
Psalm 148:12, 13 ..... 19
Proverbs 8:32 ..... 19
Jeremiah 1:6, 7 ..... 19
Daniel 6:5 ..... 21
Matthew 5:15, 16 ..... 14
Matthew 18:1-6 ..... 19
Luke 2:46, 47 ..... 19
Luke 11:52 ..... 19
Luke 18:16 ..... 19
Acts 16:1-3 ..... 19
Ephesians 6:1-3 ..... 13
Ephesians 6:4 ..... 13
1 Timothy 4:12 ..... 19
James 2:26 ..... 14
Freund, *The Police Power,* pp. 133, 497 ..... 21

# SUPREME COURT OF THE UNITED STATES

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ADA McSPARRAN, *Petitioner*

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## Petition for Writ of Certiorari to The Supreme Court of the State of Oregon

TO THE SUPREME COURT OF THE UNITED STATES:

The above named petitioner presents this her petition for writ of certiorari and shows unto the Supreme Court of the United States as follows:

## A

## Summary Statement of Matters Involved

1. *Statutory Provision Sustaining Jurisdiction.*

Section 237 (b) of the Judicial Code [28 U. S. C. A. 344 (b)] sustains jurisdiction of this Court.

2. *Validity of the City Ordinance Drawn in Question.*

The legislation here drawn in question is an ordinance of the City of Portland, regulating and in some instances prohibiting employment of women and children within the City of Portland, reading as follows:

> "Section 7. SELLING OF NEWSPAPERS BY BOYS UNDER TEN YEARS AND GIRLS UNDER EIGHTEEN YEARS. It shall be unlawful for any parent, guardian, custodian or person having charge or control of any boy under the age of ten years or of any girl under the age of eighteen years to permit any such boy or girl to sell, expose, or offer for sale on any street any newspaper, magazine or periodical; and it shall be unlawful for any such boy or girl to sell, expose or offer for sale on any street any newspaper, magazine or periodical."[1] R. 77, 90.

3. *Date of Judgment and Order to be Reviewed.*

The judgment here sought to be reviewed is that rendered by the Circuit Court of Multnomah County, Oregon, on April 16, 1942, and entered of record on June 8, 1942. (R. 60-62) Within the time required by law, petitioner duly appealed to the Oregon Supreme Court on the grounds that the ordinance was unconstitutional and as applied abridged the petitioners fundamental personal and civil rights contrary to the Federal Constitution. (R. 66-67, 70-72) The appeal was duly and timely docketed in the Oregon Supreme Court. (R. 97) The City of Portland filed a motion to dismiss, on the grounds that the Oregon Supreme Court did not have jurisdiction, alleging that under the law of Oregon that court did not have jurisdiction to review an appeal from a judgment rendered on trial de novo of an action originating in the Municipal Court of the City of Portland. R. 93.

On September 22, 1942, the Oregon Supreme Court dismissed the appeal. (R. 94, 97) Under a prior decision in *Portland* v. *White,* 106 Or. 169, 211 P. 798, it was inferred that the Oregon Supreme Court would have jurisdiction of

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[1] Petitioner's daughter Rhae was nine years of age. Jacqueline, age 12 at the time of petitioner's arrest. Both were within the age limit included in the ordinance.

an appeal from the Circuit Court of a case originating in the Municipal Court where a constitutional question is involved. On the authority of this case, petitioner considered it necessary to exhaust her remedies in the state courts in harmony with the correct practice of this Court announced in the case of *Western Union Telegraph Co.* v. *Hughes,* 203 U. S. 505; *Kentucky* v. *Powers,* 201 U. S. 1, 37; *Virginia Ry. Co.* v. *Mullens,* 271 U. S. 220, 222; *Bacon* v. *Texas,* 103 U. S. 207, 215. Therefore the judgment to be reviewed by this Court is that of the Circuit Court of Multnomah County, which did not become final under the appellate procedure of Oregon until September 22, 1942, the date of dismissal of the appeal by Oregon Supreme Court. See *American Ry. Expr. Co.* v. *Levee,* 263 U. S. 19, 20; *Tumey* v. *Ohio,* 273 U. S. 510, 515; *Hetrick* v. *Lindsey,* 265 U. S. 384.

4. *Timeliness.*

The time for filing petition for writ of certiorari in this Court expires December 22, 1942. This petition is filed within that time.

5. *Time and Manner in which Questions Raised Below.*

By motion to dismiss filed in the Municipal Court (R. 2), and by motion for directed verdict duly urged at the close of all the evidence in the Circuit Court (R. 55), petitioner duly complained that the ordinance was invalid and void as applied to her because it abridged her right to freedom of press, of speech, and of worship of ALMIGHTY GOD, contrary to the First and Fourteenth Amendments to the United States Constitution. (R. 58, 60, 61, 66-67, 68-69) The Circuit Court overruled the motion for directed verdict and held that the ordinance was constitutional and that it did not violate rights of the petitioner guaranteed under the First and Fourteenth Amendments to the Federal Constitution. R. 58, 61, 66-67, 68-69.

In Oregon Supreme Court petitioner duly questioned the

validity and constitutionality of the ordinance. (R. 95, 96) The Oregon Supreme Court did not pass on the Federal question thus presented, but dismissed the appeal for want of jurisdiction. R. 94-96.

6. *Opinions of the Courts Below.*

The opinion of the Municipal Court does not appear in the record and is not reported.

The Circuit Court's opinion appears in the judgment. R. 61.

The opinion of Oregon Supreme Court is not *officially* reported, but is unofficially reported in 129 P. 2d 65, and appears in the record. R. 94-96.

7. *Statement of Facts.*

This quasi-criminal action originated in the Municipal Court of the City of Portland, in which court petitioner was charged by complaint with an alleged violation of the foregoing ordinance. The complaint under which the prosecution was instituted and the conviction obtained reads as follows:

> "The said defendant is accused in this complaint of violating Ordinance No. 32927 of said City of Portland, entitled, 'An Ordinance to protect women and minor children, and declaring an emergency,' passed by the Council June 6, 1917, as follows:
>
> "The said defendant on September 13th, 1941, in the City aforesaid, did willfully and unlawfully allow her daughters, Jacqueline, age 12 years, and Rhae, age 9 years, to sell or expose for sale magazines on the street, within the corporate limits of said City of Portland, Oregon, whereby the peace and quiet of said City was disturbed, contrary to the Ordinance in such case made and provided." R. 1.

Petitioner duly appealed to the Circuit Court for the County of Multnomah, where the case was tried de novo.

Petitioner is one of Jehovah's witnesses. She has brought up her children in the nurture and admonition of the Lord and taught them that the only way that they can obtain life everlasting on the earth is likewise to be Jehovah's witnesses. Jacqueline, age 12, is one of Jehovah's witnesses. (R. 5, 44) Rhae McSparran, age 9, is one of Jehovah's witnesses. R. 48, 49.

On or about September 13, 1941, between about 9:30 and 10:30 o'clock A. M., petitioner and her two daughters had stationed themselves on the sidewalk on Fourth and Washington Streets, in the City of Portland. The two daughters were standing on either side of their mother, and neither the daughters nor petitioner were blocking, or in any manner interfering with, the normal movement and flow of traffic on said sidewalk, nor were they cluttering the streets with papers or debris or otherwise. They stationed themselves at this place for the purpose of distributing the *Watchtower* and *Consolation* magazines. They were equipped with canvas bags on which were printed these words, "The Watchtower and Consolation, 5c per copy." While thus standing and wearing the bags, they held in their hands the *Watchtower* and *Consolation* magazines, which they offered to the people who passed. To anyone interested in these magazines but who lacked the five cents they furnished a copy of same without charge, provided the recipient promised to read the contents thereof. Contributions of money thus received were used to defray the cost of printing and distributing more of said magazines.

Both magazines named are Scriptural periodicals containing Bible references, and are not subversive, nor do they advocate the use of force by other persons or anyone to overthrow the government. *The Watchtower* strictly adheres to the Bible as authority for its utterances, being strictly free and separate from all religion, parties, sects

or other worldly organizations. It is wholly and without reservation for the Kingdom of Jehovah God under Christ His beloved King. It is not dogmatic, but invites careful and critical examination of its contents in the light of the Scriptures. It does not indulge in controversy and its columns are not open to personalities. *The Watchtower* advocates that Jehovah God is the only true God, Maker of heaven and earth, and the Giver of life to His creatures; that God created the earth for man, originally made perfect, and placed man upon it; that man willfully disobeyed God's law and was sentenced to death, and by reason thereof, death came upon all the descendants of the first man, Adam; that Jesus Christ was made human through miraculous conception and birth and suffered death in order to provide a redemptive price, for those only of mankind who desire to serve Jehovah God and live; that Jesus Christ was thereafter raised unto heaven and placed at the right hand of Jehovah God, His Father, to be the King of Jehovah's everlasting government, The THEOCRACY, and thereafter proceeded to oust the adversary Satan and his legion of wicked angels from heaven; that Satan is now attempting to turn all mankind away from God and into destruction and violently to oppose and destroy those who dare to act as witnesses for Jehovah God, His Word, and His Kingdom, as did Christ Jesus when on earth; that Christ Jesus is the great Executioner for the Supreme Judge and is now proceeding to execute judgment of everlasting destruction upon Satan's governments and all supporters thereof, invisible and visible in the earth, in Jehovah's battle at Armageddon, which is very near, following which there will be established completely and fully in the earth the righteous government, the "new world", for which Christ Jesus taught all true servants of Jehovah to pray. An examination of *The Watchtower* conclusively proves that its pages from cover to cover of each issue contain a written sermon explaining the foregoing matters in greater detail.

Petitioner and her two minor children believed that it was their respective duty to Jehovah God, in obedience to their covenant conscientiously entered into with Him, to serve Him by advertising and preaching the gospel of God's Kingdom under Christ Jesus by public appearance upon the streets and there to distribute Bible literature, to wit, the *Watchtower* and *Consolation* magazines, periodicals containing explanations of God-given prophecies which they believed, and at the same time they received from some persons money contributions to aid in printing more like literature. The magazines contained printed sermons. While they were so acting, petitioner and her two daughters were stopped and accosted by a policewoman of the City of Portland. Each was requested by the policewoman to discontinue such activity. They refused. Whereupon Petitioner was arrested and charged with an alleged violation of the ordinance in question. R. 4-12, 17-38.

Petitioner is an ordained minister of Jehovah God, and it is her conscientious belief that by reason of a covenant made by her with Jehovah God she must preach and proclaim the gospel of God's Kingdom under Christ Jesus by presenting the printed books, booklets and magazines in question to the people of the State of Oregon. Such manner of preaching the gospel is the occupation of petitioner aside from her duties as a housewife, and she conscientiously regards it as her privilege, right and duty to instruct her children and to bring them up in the nurture and admonition of the Lord, which required that they, too, worship Jehovah by acting with their mother in the distribution of such literature to people on the streets; and that petitioner educate her children as the Constitution and laws of the United States provide that a parent may do without let or hindrance; and that the acts of her children aforesaid were, and are, voluntary acts of worship of Almighty God in the relationship between child and the Creator, Almighty God JEHOVAH, and the parent, according to said instructions. R. 17-25, 43-49.

## B

## Questions Presented

By reason of the foregoing, there were seasonably presented to the courts below and there are now presented to this Court for review substantial Federal questions as follows:

(1) Is the ordinance in question unconstitutional on its face and as construed and applied because abridging and denying petitioner's right to freedom of press, freedom of speech, and freedom to worship ALMIGHTY GOD according to His commands written in the Bible and the dictates of her conscience, contrary to the First and Fourteenth Amendments to the United States Constitution?

(2) Does the ordinance prohibit or abridge petitioner's right to teach and to bring up her children in the nurture and admonition of the Lord as required by Jehovah God, so as to violate petitioner's right of freedom of speech contrary to the First and Fourteenth Amendments to the United States Constitution?

## C

### Reasons Relied on for Allowance of Writ

The holding in the case at bar is directly contrary to the holding of the highest court of another state that the law in question violates the rights of Jehovah's witnesses. See *State* v. *Richardson,* .. N. H. .., 27 A. 2d 94. That case expressly holds that a state statute very similar to the ordinance here in question could not be lawfully applied to the activity of Jehovah's witnesses.

The holding of this Court in prior decisions, although not directly in conflict with the decision of the Circuit Court in this case, does announce clear principles of law which do not allow the conclusions reached by the Circuit Court in the case at bar. See *Pierce* v. *Society of Sisters,* 268 U. S. 510; *Meyer* v. *Nebraska,* 262 U. S. 390; *Allgeyer* v. *Louisiana,* 165 U. S. 578, 589; *Berea College* v. *Kentucky,* 211 U. S. 45, 67; *Missouri ex rel. Gaines* v. *Canada,* 305 U. S. 337; *Farrington* v. *Tokushige,* 273 U. S. 284.

Here is presented and claimed a substantial Federal question not heretofore determined by this Court. The court below has decided a Federal question in a way probably not in accord with the applicable decisions of this Court.

A most grave and serious question is here presented.

The point to be determined is whether or not this Court will permit to stand a judgment of a state court which approves of the regimentation of American citizens through "framed" and misapplied laws enacted and originally directed at other activities, but which have been illegally construed to abridge unalienable rights of freedom of parents to educate their own children, freedom to teach children God's Word and to bring them up in the nurture and admonition of the Lord, freedom of press, freedom of speech, and freedom to worship ALMIGHTY GOD, con-

trary to the First and Fourteenth Amendments to the United States Constitution.

The decision of the court below does this very evil thing, and abridges the unalienable and constitutional rights of petitioner.

The court below has so far departed from recognized procedure under the Constitution in American courts as to call for exercise of supervision of this Court to halt the same, and to correct the errors of the court below.

It is submitted that this case is one calling for exercise of this Court's supervisory powers under Section 237 (b) of the Judicial Code [28 U. S. C. A. 344 (b)] and Rule 38, paragraph 5 (a), of the Rules of this Court.

WHEREFORE petitioner prays that this Court issue a writ of certiorari directed to the Supreme Court of the State of Oregon, commanding such court to certify to this Court for review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case above described, so that the judgment and decree of the Circuit Court of Multnomah County convicting and punishing petitioner for alleged violation of the ordinance in question be reviewed and here set aside, and reversed and held for naught; and that your petitioner be granted such other and further relief in the premises as to this Court may seem just and proper under the extraordinary circumstances.

ADA McSPARRAN, *Petitioner*

By HAYDEN C. COVINGTON

*Attorney of Record*